

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0019P**

**Income Tax**

**Fiscal Years ending February 28, 1997, February 28, 1998, and February 28, 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on an income tax assessment resulting from a Department audit conducted for the fiscal years ending February 28, 1997, February 28, 1998, and February 28, 1999.

The taxpayer has two distinct product lines. One product line is the rental and sale of video tapes. The taxpayer operates approximately 150 video stores in seven states. Five of these stores are in Indiana. The second product line is real estate management. The taxpayer's domicile is out-of-state.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the penalty should be waived as the error was unintentional.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer’s penalty protest is denied.

**FINDING**

The taxpayer’s penalty protest is denied.